

REMARKS

Claims 1, 7-40, 76-79 and 82 are pending in this application.

Claim Rejections - 35 U.S.C. § 103(a)

In the Non-Final Office Action mailed September 14, 2010, the Examiner rejected claims 1, 7-40, 76-79, and 82 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,022,316 (hereinafter, “the ‘316 patent”) in view of U.S. Patent No. 6,692,456 (hereinafter, “the ‘456 patent”). Applicants respectfully traverse the rejection.

The Examiner states that the ‘316 patent discloses a method of delivering drugs through and/or withdrawing fluids from a biological membrane comprising the steps of applying at least one heated probe element capable of delivering thermal energy to cause ablation of the membrane to form a plurality of openings wherein the depth of the micropores preferably ranges from 40-180 microns. The Examiner acknowledges that the ‘316 patent does not specifically teach that the opening depth of the majority of the delivering openings falls within a range of about 40 to about 90 microns or that the delivery openings have a distribution resulting in a bell-shaped curve with said delivery openings having a mean opening depth of between about 40 and 90 microns. However, the Examiner states that, “it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the openings with the recited distribution, since it has been held that where the general conditions of the claims are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art”, citing *In re Aller*, 105 USPQ 233 (CCPA 1995) on page 3 of the Office Action.

The Examiner also notes that the ‘316 patent does not teach the use of a delivery patch. The Examiner alleges that ‘456 patent discloses a method of delivering drugs through created micropores by placing a patch on the skin. Therefore, the Examiner alleges it would have been obvious to one of skill in the art to modify the method of the ‘316 patent to include a step of patch drug delivery as disclosed by the ‘456 patent as such a step is a useful equivalent of delivering drugs through micropores.

Solely to promote prosecution, Applicants previously amended claims 1 and 21 in their June 28, 2010 reply to recite particular methods for characterizing the depth and noted that these means for characterizing the depth were neither taught nor suggested in either the ‘316 patent or

the '456 patent and as such would not be obvious to one skilled in the art considering the references alone or in combination. The Examiner now states that, "The applicant argues that the combination does not teach a method of characterizing the depth of the micropores which is a point the examiner agrees with, but the examiner notes that the claim does not require a step of characterizing the depth. As currently recited, the claims only require that the micropores be capable of being characterized with the recited methods. The examiner suggests amending the claims to recite an active step of characterizing the depth." (Office Action, page 4).

In response and solely to promote prosecution, Applicants have amended claims 1 and 21 per the Examiner's suggestion and submit that no new matter is added by way of these amendments. Applicants respectfully request withdrawal of the rejection.

CONCLUSION

The foregoing is submitted as a full and complete response to the Non-Final Office Action mailed September 14, 2010 and early and favorable consideration of the claims is requested. If the Examiner believes any informalities remain in the application that may be corrected by Examiner's amendment, or there are any other issues which can be resolved by telephone interview, please call the undersigned agent at (404) 572-2473.

Applicants submit that no additional fees beyond those required for an Extension of Time are required for submission of this paper. However, the Commissioner is hereby authorized to charge any fee deemed necessary for consideration of this paper, and to credit any overpayment, to Deposit Account No. 11-0980.

Respectfully submitted,

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